

CALIFORNIA BOARD OF LEGAL SPECIALIZATION OF THE STATE BAR OF CALIFORNIA



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WORKER'S COMPENSATION LAW CERTIFICATION EXAM

Date	Sunday, August 14, 2005 9:00 a.m. – 4:00 p.m.
Registration deadline	Friday, July 1, 2005
Exam sites	Westin at San Francisco Airport Radisson at Los Angeles Airport
Fee	\$300 writing (\$350 if using a laptop PC) <i>fee includes a box lunch</i>
Exam format	<p>The exam is divided into two three-hour sessions – the morning session includes 50 multiple-choice questions and two essay questions; the afternoon session includes four essay questions. There are no optional questions; each examinee is expected to answer all questions on the exam.</p> <p>The 50 multiple-choice questions, worth three points each, are designed to be answered in approximately 90 minutes. Each essay question is worth 75 points and is designed to be answered in approximately 45 minutes.</p>
Scoring	The maximum number of points available is 600. A passing score is 420 points, or 70%. Exams with scores between 65-70% are re-read by a Committee of Reappraisers. The decision of the Committee is final, pursuant to section 8.3 of the Rules Governing the State Bar of California Program for Certifying Legal Specialists. Results are mailed only after all reappraisals have been completed.
Reference materials	No reference materials are allowed during the exam.
Testing accommodations	Available at both sites. Contact ivonne.broussard@calbar.ca.gov or (415) 538-2145 for more information.
Study resources	See attached standards for certification, exam specifications, and sample exam questions.

For more information, visit www.californiaspecialist.org

The Standards must be read in conjunction with the Rules Governing the State Bar of California Program for Certifying Legal Specialists, which govern the Program requirements.

THE STANDARDS FOR CERTIFICATION AND RECERTIFICATION IN WORKERS' COMPENSATION LAW

1.0 DEFINITION

Workers' compensation law involves the representation of parties in connection with industrial injury and disease claims.

2.0 TASK REQUIREMENT FOR CERTIFICATION

2.1 An applicant must demonstrate that within the five (5) years immediately preceding the initial application, he or she has been substantially involved in the practice of workers' compensation law, which shall include handling matters in the following areas:

- 2.1.1 Pretrial practice and procedures;
- 2.1.2 Trial;
- 2.1.3 Appellate;
- 2.1.4 Medical;
- 2.1.5 Rating; and
- 2.1.6 Rehabilitation.

2.2 A prima facie showing of substantial involvement in the area of workers' compensation law is made by performance of the following activities:

- 2.2.1 One Hundred (100) in combination of any of the following:
 - 2.2.1.1 Participation in depositions of witnesses other than physicians;
 - 2.2.1.2 Pretrial conferences;
 - 2.2.1.3 Petition for or opposition to preapplication discovery orders;
 - 2.2.1.4 Petition for removal (Labor Code Section 5310).
- 2.2.2 Twenty (20) trials to submission of workers' compensation cases;
- 2.2.3 Preparation of five (5) of the following or any combination:
 - 2.2.3.1 Petitions for reconsideration, or answers thereto;
 - 2.2.3.2 Petitions for appellate proceedings, or answers thereto;
 - 2.2.3.3 Amicus briefs;
- 2.2.4 Ten (10) examinations of physicians by trial or deposition;

2.2.5 Participation in five (5) formal hearings before the Rehabilitation Unit or appeals, or answers thereto, from formal determinations of the Rehabilitation Unit.

3.0 EDUCATIONAL REQUIREMENT FOR CERTIFICATION

An applicant must show that, within the three (3) years immediately preceding the application for certification, he or she has completed not less than forty-five (45) hours of educational activities specifically approved for workers' compensation law specialists. A minimum of ten (10) hours of the educational requirement for certification shall be satisfied by approved educational activities dealing with the mechanics of rating permanent disability. A maximum of ten (10) hours may be satisfied by approved medical educational activities.

4.0 TASK REQUIREMENT FOR RECERTIFICATION

An applicant for recertification must show that during the current five (5) year certification period he or she has had direct and substantial participation in the practice of workers' compensation law. Such showing shall be made by compliance with the requirements set forth in section 2.0 or, at the discretion of the Commission, by sworn statement that the applicant has engaged in the practice of workers' compensation law substantially to the same extent as described in the application for original certification.

5.0 EDUCATIONAL REQUIREMENT FOR RECERTIFICATION

An applicant for recertification must show that, during the current five (5) year certification period, he or she has completed not less than sixty (60) hours of educational activities specifically approved for workers' compensation law specialists.

Specifications For State Bar of California Workers' Compensation Law Certification Examination

Purpose of the Examination: The Workers' Compensation Law Examination consists of a combination of essay and multiple-choice questions. It is designed to verify the applicant's knowledge of and proficiency in the usual legal procedures and substantive law that should be common to specialists in the field as represented by the skills listed below. We recognize that these skills are interrelated, which may require that you apply several skills in responding to a single exam question. Also, the order of the skills does not reflect their relative importance, nor does the skill sequence represent an implied order of their application in practice.

Your answers to the exam questions should reflect your ability to identify and resolve issues, apply the law to the facts given, and show knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. Of primary importance for the essay questions will be the quality of your analysis and explanation.

Knowledge of the following fundamental lawyering skills may be assessed:

Skill 1: Professional Responsibility

- 1.1 Duties to clients, opposing counsel and the Court
- 1.2 Bases for attorney's fees
- 1.3 Bases for sanctions
- 1.4 Fee agreements
- 1.5 Arbitration/mediation and dual representation
- 1.6 Conduct resulting in malpractice/discipline

Skill 2: Initial Claim Evaluation

- 2.1 Injury (ies) dates
- 2.2 Timing of claims
- 2.3 Benefits
- 2.4 Identification of relevant records
- 2.5 Identification of issues
- 2.6 Evaluation of the records
- 2.7 Related civil remedies
- 2.8 Conditions of compensation and defenses to compensability
- 2.9 Public employees
- 2.10 Subsequent Injury Fund
- 2.11 Uninsured Employers Fund
- 2.12 Death claims
- 2.13 Medical treatment/control/procedure
- 2.14 Serious and willful misconduct
- 2.15 Labor Code Section 132a

Skill 3: Practice & Procedures (Trial & Appellate)

- 3.1 Jurisdiction/venue
- 3.2 Discovery & investigation
- 3.3 Vocational rehabilitation
- 3.4 Expert witnesses
- 3.5 Evidence
- 3.6 Ethics
- 3.7 Making of record & appeals
- 3.8 Sanctions; penalties
- 3.9 Petitions and post trial remedies
- 3.10 Removals (Labor Code Section 5310)
- 3.11 Writs

- 3.12 Technical defenses
- 3.13 Liens
- 3.14 Settlements

Skill 4: Medical Knowledge

- 4.1 Anatomy
- 4.2 Physiology
- 4.3 Terminology

Skill 5: Rating

- 5.1 Protocols/guidelines
- 5.2 Psyche/work function impairments

**STATE BAR OF CALIFORNIA
WORKER'S COMPENSATION LAW CERTIFICATION EXAM**

SAMPLE QUESTIONS

Sample Question #1

Traveling to work in the morning, Roger, a farm laborer, was injured while riding as a passenger in a van. The van was owned by Thomas, a foreman for Lester, a farm labor contractor.

At the time of this incident, Thomas' crew, which included Roger, was working at three distinct parcels of land owned by ABC Farms.

Two months before the accident, Lester's labor contractor's license had lapsed due to nonpayment of fees.

- A. What remedies, if any, does Roger have against Lester? Discuss.**
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Sample Question #2

The injured sustained an injury at work to his low back on April 3, 1997. Shortly thereafter he retained an attorney who filed an application for adjudication of claim on October 3, 1997. The injured was examined by an Agreed Medical Examiner (AME) in orthopedics, who found his condition compensable.

The injured subsequently discharged his attorney after which he amended his claim to include injury to the neck with headaches. He filed an amended employee's claim for workers' compensation benefits (DWC1). The insurance company denied the neck/headaches injury.

Since the injured was not represented by an attorney, he selected a neurologist from a Qualified Medical Evaluator (QME) panel, who found the neck/headaches compensable. On March 4, 2001, a Stipulated Findings and Award was approved based upon the orthopedic AME and neurologic QME reports.

The pro per injured filed a timely Petition to Reopen alleging increased disability to the neck, low back, and a torn meniscus to the right knee as a result of a fall due to a weakened low back. The injured's treating orthopedist found increased disability in the low back and concluded the knee injury was a result of the weakened low back. The QME (neurologist) also found increased disability.

Subsequently, a mandatory settlement conference was held at which time the judge issued an order that the injured be re-examined by the orthopedic AME. The AME refused to re-examine the injured because he was in pro per.

- A. Can the judge order the AME to re-examine the injured? Discuss.**
- B. Can the judge's order be appealed? Discuss.**
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Sample Question #3

John signed a contract with Beta Company ("Beta"), a licensed subcontracting framing company for Ace Construction ("Ace"). Ace was engaged in building a tract of homes. In the contract, John agreed to be an independent contractor and to frame the homes at \$.50 per linear board foot. Although John had previously been a licensed contractor, he was not licensed when he entered into contract. He is an experienced carpenter and has worked independently for both Ace and Beta on numerous occasions.

Beta agreed to furnish all lumber and materials, and supply a foreman, major equipment and tools. John agreed to follow the directions of the Beta foreman, and decided that he would use his own truck to transport equipment from site to site. He also brought his own tool belt and Skilsaw® to the job site on a daily basis.

Bill, an employee of Ace and not certified to drive a forklift, negligently backed a forklift into a scaffold which was improperly assembled by Beta in violation of Title 8 safety orders. John was knocked off the scaffold, sustaining serious injury.

- 1.1 What are John's remedies, if any, against Beta? Discuss.**
- 1.2 What are John's remedies, if any, against Ace? Discuss.**
- 1.3 What defenses, if any, may Ace assert? Discuss.**

Sample Question #4

Ken wanted to attend a rave concert. He did not have \$50 for a ticket, so, with the promoter's permission, he helped set up tables and chairs in exchange for admission.

During the set up, Robert, one of the musicians and an independent contractor, dropped a ten-foot speaker on Ken's head, knocking him unconscious. While on his way to the hospital in an ambulance, the ambulance crashed, fracturing Ken's leg.

- A. What claims may Ken assert, if any, against Robert? Discuss.**
 - B. What claims may Ken assert, if any, against the concert promoter? Discuss.**
 - C. What claims may Ken assert, if any, against the ambulance company? Discuss.**
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Sample Question #5

Employee Deputy Sheriff suffered a heart attack and died 11/30/02 while pulling wounded partner (under fire) to safety during a gun battle with a bank robbery suspect. Employee's girlfriend of six years consulted with you to file a claim for death benefits. The girlfriend provided you with the following information:

- 1. Girlfriend and employee lived in the same home, sharing all expenses for the past five years. The girlfriend is an exotic dancer earning \$100,000 per year.
- 2. In January 1996, employee abandoned his wife and three children, then aged three, seven, and 14.
- 3. Wife has an annual income of \$20,000.
- 4. Employee had been paying 60% of his monthly income to his wife until the date of his death. He had been making monthly payments since leaving his wife.
- 5. Employee and his wife were never legally separated or divorced and there are no legal orders regarding child support obligations.
- 6. Wife has been living out of state since mid-1996.

- 7. The child, age three in January 1996 has Down syndrome and the birth certificate does not show the identity of the father.
- 8. Employee was not a member of PERS.

The girlfriend disclosed that the wife has asked her to contact you to represent both the wife and the girlfriend with respect to the death benefit claim.

- A. Discuss all conflicts of interest between the girlfriend, the wife, and the children.**
 - B. Discuss all benefits each dependent may claim.**
 - C. Discuss defenses that can be raised with respect to the various benefits claimed.**
 - D. Discuss whether the wife should be appointed guardian ad litem for the children.**
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Sample Question #6

Patrick is a flight attendant with JumboJet Airlines. He was hired in St. Louis, Missouri in 1998, and flew out of St. Louis for six months until moving to Los Angeles with his family. After moving to Los Angeles, he continued to initiate his flights from St. Louis, and commuted free of charge from Los Angeles to St. Louis.

Over the Christmas holiday in 2001, he was assigned to work a flight from St. Louis to Maui, Hawaii, and decided to take his family, who were allowed to fly with him at a discounted fare. He had been advised that he would have a 48-hour layover in Maui before he was required to work the return flight to Los Angeles.

Upon arrival at their hotel in Maui, Patrick rented a car at his own expense and took his family on a snorkeling excursion at a beach located about an hour's drive from the hotel. During the drive back, his vehicle was rear-ended by a truck owned by the Maui Sugar Company. Patrick sustained serious injuries and filed his workers' compensation claim in Los Angeles, California.

- A. What are Patrick's remedies? Discuss.**
- B. What are JumboJet Airlines' defenses, if any? Discuss.**